

**DEPARTMENT OF STATE REVENUE**

LETTER OF FINDINGS NUMBER: 98-0255  
SALES AND USE TAX  
FOR TAX PERIODS: 1994-1995

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**1. Sales and Use Tax: Marketing Expenses**

**Authority:** 45 IAC 2.2-3-16

Taxpayer protests the assessment of tax on certain marketing expenses.

**2. Tax Administration: Penalty**

**Authority:** IC 6-8.1-10-2.1, 45 IAC 2.2-3-16.

Taxpayer protests the imposition of a penalty.

**Statement of Facts**

Taxpayer is a clothing retailer. After an audit, Taxpayer was assessed additional sales and use tax, interest and penalty for the tax period 1994-1995. Taxpayer protested a portion of the assessment and a hearing was held. More facts will be provided as necessary.

**1. Sales and Use Tax: Marketing Expenses**

**Discussion**

Taxpayer protests the assessment of use tax on certain expense accounts. These accounts included promotional materials such as banners and statement stuffers that were centrally purchased and stored in Ohio before being distributed to the Indiana stores. Taxpayer contends that it paid use taxes on these accounts pursuant to an audit

by Ohio. Taxpayer offered a copy of a check and letter as evidence it had paid the taxes to Ohio. Indiana allows a credit for use taxes paid to another state. 45 IAC 2.2-3-16.

### **Finding**

Taxpayer's protest is sustained subject to audit verification.

### **3. Tax Administration: Penalty**

#### **Discussion**

Taxpayer's final point of protest concerns the imposition of the ten per cent negligence penalty pursuant to IC 6-8.1-10-2.1. Indiana Regulation 45 IAC 15-11-2 (b) clarifies the standard for the imposition of the negligence penalty as follows:

Negligence, on behalf of a taxpayer is defined as the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer. Negligence would result from a taxpayer's carelessness, thoughtlessness, disregard or inattention to duties placed upon the taxpayer by the Indiana Code or department regulations. Ignorance of the listed tax laws, rules and/or regulations is treated as negligence. Further, failure to read and follow instructions provided by the department is treated as negligence. Negligence shall be determined on a case by case basis according to the facts and circumstances of each taxpayer.

Taxpayer had a duty to maintain adequate records to substantiate its computation of the sales and use tax due to the state of Indiana and provide those records at the Auditor's request. Taxpayer also failed to pay sales tax or accrue use tax on categories of purchases that were also taxed in a previous audit.

### **Finding**

Taxpayer's protest is denied.